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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1969

No. 508

THOMAS HANNA,

Petitioner,

VS.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

EDWARD J. WALSH
WILLIAM D. REDDY and
ARTHUR J. O'DONNELL,
100 North LaSalle Street,
Chicago, Illinois 60602,
Area Code 312—263-5747,
Counsel for Petitioner.

MIDWEST LAW PRINTING CO., CHICAGO 60601, FINANCIAL 6-3988

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Petitioner Thomas Hanna prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois affirming his conviction of burglary and sentence to the Illinois State Penitentiary.

REFERENCE TO REPORTS OF OPINIONS.

People v. *Hanna, et al.*, 42 Ill. 2d 323, (Gen. No. 41521), 247 N.E. 2d 610, is attached as an Appendix.

STATEMENT OF JURISDICTIONAL GROUNDS.

The judgment of the Supreme Court of Illinois was entered on March 27, 1969. A timely petition for rehearing filed on April 3, 1969, was denied on May 27, 1969. Jurisdiction of this Court is invoked under Title 28, USC, sec. 1257 (3).

QUESTIONS PRESENTED FOR REVIEW.

1. Whether the naked suspicion of an informer is distilled to the strength of probable cause by filtering it through a network of police officers?
2. Whether a search of an automobile trunk at a police station thirty minutes after an arrest on the street without a warrant is constitutionally permissible?

CONSTITUTIONAL PROVISIONS INVOLVED.

The Fourth Amendment and the Due Process Clause of the Fourteenth Amendment.

STATEMENT OF THE CASE.

A resident of Evergreen Park, Illinois, who lived near premises in said suburb that had been recently burglarized, told one Sergeant Ward that he had seen a car with two male occupants and heard their conversation which "seemed suspicious to him." Sergeant Ward put the car under surveillance for about a week prior to April 2, 1966. About 8:00 P.M. that evening he saw petitioner Hanna and another man he later learned to be Cooper get into the car. He noticed that the car had a different license plate than one earlier seen. A check of the plate revealed that the car was owned by one Sandra Blottiaux, "known by the police to be the sister of 3 known criminals." (App. 2a) Sergeant Ward followed the car over the Tri-State Tollway to a gas station in Skokie, Illinois, a suburb north of Chicago. There he learned that the occupants of the car had asked for directions to Skokie. He telephoned the Skokie police and then went over to Skokie police headquarters where he informed one Lieutenant Cleburne about the automobile and returned to Evergreen Park, a suburb southwest of Chicago. (App. 2a)

Skokie radioed all its squad cars to call their station and when the Skokie officers telephoned they were given a description of the car and the occupants as conveyed by Sergeant Ward of the Evergreen Park police. At 10:12 P.M. a burglary in progress came in and at 10:15 P.M. Sergeant Langley of the Skokie police responded and found an open window in a lean-to shed attached to a two-story brick building. The caller who lived one door east told him he had seen a man lifting the window. At

11:00 P.M. the Skokie police learned that the Niles police had the petitioner in custody. (App. 3a)

The Niles police stopped the petitioner on the street and asked him and Cooper for identification. The petitioner responded: "Let's go down to the station and we'll get this straightened out." The ignition key would not open the trunk. Thirty minutes later a locksmith was called and the trunk was forced open. In the trunk were articles which were later identified as having been taken in a burglary committed earlier that evening in Wilmette, a suburb located further north of both Skokie and Niles. Petitioner and Cooper were convicted of that burglary. (App. 5a)

A motion to suppress the evidence discovered in the trunk of the automobile was overruled by the trial court (A. 12) and the court below affirmed. (App. 9a)

A timely petition for rehearing was filed on April 3, 1969, citing *Dyke* v. *Taylor Implement Mfg. Co.*, 391 U.S. 216. Said petition was denied on May 27, 1969.

Execution of petitioner's penitentiary sentence has been stayed pending this Court's ruling upon the instant petition for writ of certiorari.

REASONS FOR GRANTING THE WRIT.

1. IS THE NAKED SUSPICION OF AN INFORMANT DISTILLED TO THE STRENGTH OF PROBABLE CAUSE BY FILTERING IT THROUGH A NETWORK OF POLICE OFFICERS?

The automobile in the instant case was first brought to the attention of the Evergreen Park police department by an Evergreen Park resident who lived near premises in said suburb that had been burglarized. He told one Sergeant Ward that he had seen the car and heard the conversation of two male occupants which "seemed suspicious to him." Sergeant Ward put the car under surveillance for about a week prior to April 2, 1966. About 8:00 P.M. that evening he saw petitioner Hanna and another man he later learned to be Cooper get into the car. He then noticed that the car had a different license plate than the one earlier seen. (App. 2a) How was the license plate different? Was it a different number for the same year? The record is silent in that regard. For aught else that appears of record, it might simply have been a renewal plate for the current year. It is a matter of common knowedge that the Secretary of State allows a period of grace to renew license plates. This surmise is borne out by the fact that the license number observed on April 2, 1966, was 1966 Illinois license No. 921-183.

That number was checked by the police. They learned that it was the license of the car in question which was owned by one Sandra Blottiaux, "known by the police to be the sister of 3 known criminals." (App. 2a) Since the concept of "attainder of blood" has heretofore been unheard of in the annals of American jurisprudence, we

doubt very seriously that such a fact could be considered an important ingredient in the distilling process which commenced upon the single germ of a resident's *suspicion*.

At 8:00 P.M., Sergeant Ward followed the automobile of petitioner from Evergreen Park, a suburb located southwest of Chicago, to the Tri-State Tollway, north to Dempster Street (8800 North) and then east to Skokie, the first suburb north of Chicago, to a gas station. He also stopped at said gas station where he learned that the petitioner had asked directions to Skokie. Sergeant Ward then telephoned the Skokie police department and described the car and its occupants. Then he drove to the Skokie police department headquarters where he gave all of his information to one Lieutenant Cleburne and returned to Evergreen Park. (App. 2a)

Skokie radioed all its squad cars to call their station and when the Skokie officers telephoned they were given a description of the car and the occupants as conveyed by Sergeant Ward of the Evergreen Park police. At 10:12 P.M. a burglary in progress came in and at 10:15 P.M. Sergeant Langley of the Skokie police responded and found an open window in a lean-to shed attached to a two-story brick building. The caller who lived one door east told him he had seen a man lifting the window. At 11:00 P.M. the Skokie police learned that the Niles police had the petitioner in custody. (App. 3a)

There is nothing of record connecting the petitioner with any offense in Skokie. Indeed, the time and distance involved would appear to make any involvement in Skokie offenses impossible.

The Niles police stopped the petitioner on the street and asked him and Cooper for identification. The peti-

tioner responded: "Let's go down to the station and we'll get this straightened out." The ignition key would not open the trunk. Thirty minutes later a locksmith was called and the trunk was forced open. In the trunk were articles which were later identified as having been taken in a burgary committed earlier that evening in Wilmette, a suburb located further north of both Skokie and Niles. Petitioner and Cooper were convicted of that burglary. (App. 5a)

Thus, the facts of record at bar demonstrate that there was no probable cause for arrest without a warrant. The petitioner and the automobile in question came to the attention of the Evergreen Park police based upon the naked suspicion of an Evergreen Park resident. At that juncture the Evergreen Park police certainly did not have sufficient probable cause to arrest the petitioner. Nothing occurred during the one-week surveillance of the automobile which would give the police probable cause to arrest the petitioner. Nothing occurred during the trip from Evergreen Park to Skokie to the gas station to give Sergeant Ward probable cause to arrest the petitioner. He did not arrest the petitioner at that time. Although he conveyed his suspicion of petitioner and the car to the Skokie police based upon the conveyed suspicion of the Evergreen Park resident, the Skokie police did not thereby have sufficient probable cause to arrest the petitioner. Nothing in this record even remotely connects the petitioner with any offense that may have occurred in Skokie on the night of the arrest. Skokie did not arrest the petitioner. Niles arrested the petitioner based upon *suspicion* three times removed; from the Evergreen Park resident to Sergeant Ward of the Evergreen Park police to the Skokie police to the Niles police via radio. That is not

probable cause. *Beck* v. *Ohio*, 379 U.S. 89; *Sibron* v. *New York*, 392 U.S. 40.

2. ASSUMING FOR THE NONCE AND ARGUENDO THAT THE ARREST WITHOUT A WARRANT WAS LEGAL IN ALL RESPECTS, THE SEARCH OF THE PETITIONER'S AUTOMOBILE AT THE NILES POLICE STATION THIRTY MINUTES LATER WAS ILLEGAL.

The court below affirmed petitioner's conviction upon the premises that *Cooper* v. *California*, 386 U.S. 58, overruled *Preston* v. *United States*, 376 U.S. 364, and that *United States* v. *Rabinowitz*, 339 U.S. 56, is of continuing validity and vitality. (App. 7a-8a) Neither premise is correct. *Dyke* v. *Taylor Implement Mfg. Co.*, 391 U.S. 216; *Chimel* v. *California*, ... U.S. ....., 23 L. Ed. 2d 685.

Since the basic postulates upon which the court below adjudicated petitioner's Fourth Amendment rights were faulty, it follows logically that its conclusion upholding the search are likewise faulty. Without further ado your Honors should summarily vacate the judgment of conviction in the case at bar for further consideration in the light of *Dyke* v. *Taylor Implement* and *Chimel* v. *California*.

Once the court below has been authoritatively informed that *Preston* v. *United States* is of continuing vitality despite *Cooper* v. *California*, the case at bar will become an *a fortiori* reversal. Consider the reasons for permitting contemporaneous searches following warrantless but otherwise valid arrests, i.e., the need to seize weapons and other things which might be used to assault an officer or effect an escape; the need to prevent the destruction of evidence of *the* crime. Those justifications are absent where a search is remote in time and place from the arrest. (23 L. Ed. 2d at 694)

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In the case at bar, there was absolutely no danger of the arresting officers being assaulted or the petitioner escaping: "When asked their names and for some identification, Hanna responded by suggesting: 'Let's go down to the station and we'll get this sraightened out.'" (App. 4a) As regards destruction of evidence of *the* crime, there simply was no crime known or even suspected until *after* the search of the automobile trunk. "In the trunk were articles *subsequently* identified as taken in a burglary committed earlier that evening in Wilmette, and it is from their conviction of this burgary that defendants now appeal." (App. 5a, emphasis supplied.)

CONCLUSION.

From the above and foregoing several premises, petitioner prays that your Honors will consider his complaints to be of sufficient constitutional magnitude to warrant this Court's review on writ of certiorari.

Respectfully submitted,

WILLIAM D. REDDY and
ARTHUR J. O'DONNELL,
100 North LaSalle Street,
Chicago, Illinois 60602,
Area Code 312—263-5747,
Counsel for Petitioner.

August 22, 1969.

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APPENDIX

Opinion of the Supreme Court of Illinois

Mr. Justice Underwood delivered the opinion of the court:

Defendants, Thomas Hanna and Theodore Raymond Cooper, following a bench trial in the Cook County circuit court, were found guilty of burglary. Hanna was sentenced to imprisonment for a year and a day, and Cooper was admitted to probation for 3 years with the first 30 days to be served in the House of Correction. Their appeals come directly here on the basis of alleged constitutional violations. The issues are whether probable cause existed for their warrantless arrest and the ensuing search of the car trunk, and whether application of the rule that recent, unexplained possession of stolen property raises a presumption of guilt violates defendant's constitutional right to remain silent.

The latter question is easily disposed of. No objection was made at any time in the trial court on the basis now urged. In fact, counsel for defendants initiated the stipulation that the evidence heard on the motion to suppress be considered as evidence at the trial. Constitutional claims, like other claims, may be waived, and the absence of any prior objection prohibits consideration of the alleged invalidity of the recent, unexplained possession rule. *People* v. *Hubbard,* 38 Ill. 2d 104, 110; *City of Chicago* v. *Joyce,* 38 Ill. 2d 368, 371-72.

Resolution of the probable cause issue requires reference to the facts. Essentially uncontroverted are the following: Sergeant Ward of the Evergreen Park police de-

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partment testified that subsequent to a recent burglary in that community an identified resident living near the burglarized premises reported to the Evergreen Park police that he had seen 2 men in a described auto and heard their conversation which seemed suspicious to him. The car was a 1963 red Ford Falcon with 1966 Illinois license No. 921-183. The record owner of the car proved to be Sandra Blottiaux, known by the police to be the sister of 3 known criminals. Sergeant Ward placed the car under surveillance for about a week prior to April 2, 1966. About 8:00 P.M. that evening he noticed a man he knew to be defendant Hanna and another man he later learned to be Cooper get into the car. He noticed the car had a license plate different from the one earlier seen, and he followed the car north on the Tri-State Tollway until it reached Dempster Street. There it left the tollway and moved east on Dempster Street, stopping at a gas station. The sergeant also stopped at the gas station and learned the 2 men had asked for directions to Skokie. He then called the Skokie police department and told the dispatcher the 2 men were in the vicinity, furnishing their descriptions and a description of the car. He then drove to the Skokie police department headquarters, where he met with Lieutenant Cleburne and gave him all the information which he had regarding both men. Sergeant Ward then returned to Evergreen Park.

Lieutenant Cleburne's testimony corroborated that of Sergeant Ward as to the communication from the latter. Additionally, however, the lieutenant testified that Sergeant Ward told him one of the occupants of the car, Hanna, was a known burglar. This information was relayed by Lieutenant Cleburne to the Skokie officers, fol-

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lowing which he called the Niles police department and surrounding communities, giving the same information to them. Sergeant Langder, a Skokie police officer, also testified to the communication wth Sergeant Ward, and stated that immediately after receiving the sergeant's telephone call Lieutenant Cleburne instructed "our cars to call our station and when they telephoned into the station they were given the information in question." At 10:12 that evening, Sergeant Langder received a call regarding a burglary in process in Skokie. He responded to the call, arriving at a two-story brick home at 10:15 P.M. He there found open about 10 inches a rear window just above a small lean-to shed. He spoke to the caller who stated that he lived one house east and had observed a person, whom he described, standing on top of the lean-to and lifting the window. Sergeant Langder then notified Lieutenant Cleburne of the situation including the description of the subject. This communication was made over the police car radio, *i.e.* from Sergeant Langder's car to Lieutenant Cleburne's who was also out on a call at that time. The investigation was completed at 11:00 P.M. and at his time Sergeant Langder was advised by radio that Niles detectives had stopped the Falcon auto.

Vigorously attacked is part of the testimony of Niles Police Lieutenant Edward Dennis. He stated that his first knowledge of the auto in question was furnished by 2 separate telephone calls from Lieutenant Cleburne who gave him the information provided by Sergeant Ward and in particular a description of the car and its occupants. Lieutenant Dennis did not testify that he was informed that one of the car's occupants was a known burglar, but he was not specifically questioned as to this.

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(Appendix)

After receiving the second telephone call Lieutenant Dennis testified that he and Niles Sergeant Golbach left the Niles police headquarters and took up a position on Dempster Street. While there Lieutenant Dennis testified that he received a radio message that the car in question had been seen leaving the area of an attempted burglary by a Skokie police officer and was last seen going west on Dempster. It is this testimony regarding the radio message which is challenged by defendants. Lieutenant Dennis did not know which of the 28 Skokie officers on duty that night had furnished the information.

About 35 to 40 minutes after receiving the radio message Lieutenant Dennis and Sergeant Golbach observed and stopped a vehicle containing two white males which fit the description previously given them. Using his flashlight Lieutenant Dennis was able to see a pair of worn leather gloves and a multiple purpose instrument, one use of which was a glass cutter, on the dash board. On the rear floor behind the passenger seat the witness saw a pair of work gloves, a flashlight and a fork with the tongs bent. Lieutenant Dennis looked into the glove compartment, which Sergeant Golbach testified was open, shortly after the passenger, Hanna, was removed from the car and discovered a roll of masking tape and a mallet, the head of which was covered with masking tape. When asked their names and for some identification, Hanna responded by suggesting: "Let's go down to the station and we'll get this straightened out."

Other police officers who had arrived to assist aided in transporting defendants and the car to the Niles police station where a locksmith opened the trunk of the car

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about one-half hour later. In the trunk were articles subsequently identified as taken in a burglary committed earlier that evening in Wilmette, and it is from their conviction of this burglary that defendants now appeal.

Niles Police Sergeant Golbach, who was with Lieutenant Dennis at police headquarters when the 2 telephone calls from Lieutenant Cleburne were received and who was in the squad car with Lieutenant Dennis, also testified. Although he generally corroborated the testimony of Lieutenant Dennis, he did not mention the challenged radio message nor was he questioned specifically about it on either direct or cross examination. The report made out by officers Golbach and Dennis some hours following the arrest contained no reference to the radio message.

Defendants vigorously urge that Lieutenant Dennis testified falsely regarding receipt of the radio message which indicated a car answering the Falcon's description had been seen leaving the area of a burglary; and that, absent this message, no probable cause for the arrest existed. As evidence of its falsity they call attention to the fact that Sergeant Golbach, who was with Lieutenant Dennis, did not mention such message in his testimony; that the written report of their investigation prepared by the sergeant and approved by the lieutenant omitted any reference to the message; that Sergeant Langder, the Skokie police officer who investigated the "burglary in process" call, made no reference to the Falcon being seen near the area from which the call came; that Lieutenant Dennis did not know which of the Skokie officers had relayed the information forming the basis for the radio message the lieutenant testified he received; no other officer was presented by the prosecution who had made

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or heard the call or radio message; and no police radio logs were offered indicating such a radio message was sent. Opposed in some degree to these facts are these additional facts: Sergeant Golbach was not specifically asked whether he heard the radio message; Lieutenant Cleburne testified that he was not in his police car at all times during the period when the message was transmitted; that, while it was Sergeant Langder who answered the "burglary in process" call, numerous other police cars were on the Niles streets, and, conceivably, another car near that area might have observed the Falcon and reported it; that Lieutenant Dennis was a veteran police officer with 12 years experience, characterized in defendants' brief as an experienced and competent police officer; that the police report was approved by him about 5:30 A.M. after almost a full night's work.

The rules that a warrantless arrest may be made on the basis of probable cause and that a warrantless search may be made incidental to a valid arrest have been too often stated by us to require extended reiteration here. (*People* v. *Georgev,* 38 Ill. 2d 165; *People* v. *McCrimmon,* 37 Ill. 2d 40) Whether probable cause existed must be governed by the totality of the facts and circumstances in each case. (*People* v. *Erickson,* 31 Ill. 2d 230.) Here we have no essential dispute in the facts up to the point of the controversial radio message from Niles police headquarters. At that point Lieutenant Dennis was aware of the following factors: (1) The car in question had been identified by an informant who indicated that it may have had some connection with a recent burglary in Evergreen Park, (2) its license was registered in the name of the sister of three known criminals, (3) on April 2, 1966, the

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car was bearing license plates different from those which had been displayed upon it for the previous 4 days, (4) the auto was a considerable distance from the owner's residence, occupied by 2 men, one of whom apparently had been represented to Lieutenant Dennis to be a known burglar and it was being operated without a license plate light. In our judgment these facts justified the action of the officers in stopping the car and questioning its occupants. (*Georgev; McCrimmon.*) If additional support for this action were thought necessary, however, the testimony of Lieutenant Dennis relating to the radio message is not without probative value. The fact that some witnesses did not hear that message and that others did not state whether they heard it or not does not destroy the value of the lieutenant's positive testimony that he received the message. Rather, a question as to his credibility is raised, and resolution of questions of credibility is for the trier of facts. (*People* v. *Clark*, 30 Ill. 2d 216; *People* v. *McCreary*, 29 Ill. 2d 295; *People* v. *Dillon*, 24 Ill. 2d 122.) The trial judge apparently chose to believe the lieutenant, and his evaluation wil not be disturbed by us on the basis of conflicting evidence. *Clark.*

Defendants contend that, even if they were lawfully arrested, the search of the car trunk at a place remote from the arrest and without a warrant was not constitutionally permissible. That search was made shortly after the vehicle had been taken to the police station, apparently about midnight. The test of the validity of the search is not, of course, whether a warrant could have been secured. Rather, the test is whether the search without a warrant was reasonable. (*Cooper* v. *California*, 386 U.S. 58, 62, 17 L. Ed. 2d 730, 733, 87 S. Ct. 788; *United*

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States v. *Rabinowitz*, 339 U.S. 56, 66, 94 L. Ed. 653, 660, 70 S. Ct. 430.) Defendants argue that we "have interpreted Cooper as justifying all searches of the cars in which defendants were arrested, even though such occurred at times and places remote from the arrests", and, citing *Dyke* v. *Taylor Implement Mfg. Co.*, 391 U.S. 216, 20 L. Ed. 2d 538, 88 S. Ct. 1472, urge us to reconsider our cases which have relied on *Cooper* and have sustained searches not contemporaneous with the arrest. (See *People* v. *Rossolille*, 38 Ill. 2d 316; *People* v. *Brown*, 38 Ill. 2d 353; *People* v. *Jones*, 38 Ill. 2d 427; *People* v. *Carter*, 38 Ill. 2d 496; *People* v. *Pickett*, 39 Ill. 2d 88; *People* v. *Nugara*, 39 Ill. 2d 482; *People* v. *McKnight*, 39 Ill. 2d 577; *People* v. *Robinson*, 40 Ill. 2d 453; *People* v. *Weaver*, 41 Ill. 2d 434, filed November 22, 1968.) We perceive nothing in *Dyke*, however, necessitating any change in our interpretation of *Cooper*. By contrast with our facts, the evidence in *Dyke* clearly indicated that the officer who arrested defendants had no such description of the car occupied by the individuals who committed the offense for which defendants were there convicted as would have justified an arrest for that crime. The evidence there supported only an arrest for reckless driving, an offense to which the subsequent search of the car bore no relationship. The court there stated: "Automobiles, because of their mobility, may be searched without a warrant upon facts not justifying a warrantless search of a residence or office [citing cases]," noting, however, that such action required the existence of " 'reasonable or probable cause' to believe that they will find the instrumentality of a crime or evidence pertaining to a crime before they begin their warrantless search." (391 U.S. at

....., 20 L. Ed. 2d at 543, 88 S. C. at 1475.) It is clear to us that the invalidity of the search at the courthouse of the *Dyke* car was not due to its remoteness from the place of arrest but, rather, to the absence of any probable cause to believe such search would be fruitful.

By contrast with *Dyke* we have here adequate grounds for an arrest as well as discovery, at the time the car was stopped, of tools and materials on the dash, floor and in the apparently open glove compartment of the car which were suitable for burglary purposes. In our judgment the ensuing search of the car trunk at the police station was more than adequately supported by "reasonable or probable cause to believe that they will find the instrumentality of a crime or evidence pertaining to a crime." *Dyke; Cooper; State* v. *Perez,* 79 N.M. 417, 444 P. 2d 602; *Reagan* v. *State,* 4 Md. App. 590, 244 A. 2d 623.

The judgment of the circuit court of Cook County is affirmed.

Judgment affirmed.

Mr. Justice Ward took no part in the consideration or decision of this case.

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MISC. 508

THOMAS HANNA,

Petitioner,

VS.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

(On Petition For Writ of Certiorari To The Supreme Court Of Illinois)

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Illinois Supreme Court is reported at 42 Ill. 2d 323, 247 N.E. 2d 610.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED FOR REVIEW

1. Whether there was probable cause to arrest the defendant?

2. Whether the search of the automobile without a warrant at the police station after officers had observed burglary tools in plain view is constitutionally permissible?

CONSTITUTIONAL PROVISIONS

The Fourth and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CASE

Subsequent to a burglary in Evergreen Park, Illinois, an identified resident of that suburb who lived near the burglarized premises reported to the Evergreen Park police seeing two suspicious men in a 1963 red Ford Falcon bearing Illinois license plates. (Def. App. 2a). Upon checking the registration of the car, the police discovered its owner to be Sandra Blottiaux, the sister of three known criminals. (Def. App. 2a). Sergeant Ward of the Evergreen Park police put the car under surveillance.

On April 2, 1966, about one week later, Sergeant Ward observed defendant Hanna, a known burglar, and another man get into the Falcon, which at this time was bearing a different set of license plates. (Def. App. 2a). Sergeant Ward followed the car. Upon learning from the attendant of a gas station in which the defendant and his companion had stopped to ask directions that the two men were bound for Skokie, Illinois, Sergeant Ward telephoned the Skokie police with a description of the car and its occupants. He gave a summary of his information to Lieuten-

ant Cleburne of the Skokie police when he arrived at the Skokie police station. (Def. App. 2a).

Lieutenant Cleburne transmitted this information to his men and to the men of the police departments of the surrounding areas. (Def. App. 3a).

Just after 10:00 P.M. that evening, the Skokie police responded to a burglary in progress call at a home in that suburb.

Lieutenant Dennis of the Niles police department had received the information concerning the defendant and his companion along with a description of the car earlier in the evening from Lieutenant Cleburne. (Def. App. 3a). After the burglary call in Skokie, Lieutenant Dennis received a radio message that the red Falcon had been observed leaving the scene of a burglary. (Def. App. 4a).

Shortly after receiving this message, Lieutenant Dennis and his partner stopped the defendant's vehicle, which was travelling without a license plate light. (Def. App. 4a, 7a).

Reflected in the glare of his flashlight, Lieutenant Dennis observed a pair of worn leather gloves and an instrument which could be used as a glass cutter on the dashboard of the car. (Def. App. 4a). On the rear floor of the car were another pair of work gloves, a flashlight and a fork with bent tongs. (Def. App. 4a). There was a roll of masking tape and a mallet, the head of which was covered with tape, in the open glove compartment. (Def. App. 4a). The officers were unable to open the trunk of the car because the defendant had no key.

The defendant and Cooper, his companion, were taken to the Niles police station. About one-half hour later, a locksmith opened the trunk of the car at the Niles station

(Def. App. 4a, 5a). The trunk contained articles identified as having been taken earlier that evening during a burglary in Wilmette, Illinois.

After a bench trial in the Circuit Court of Cook County, Thomas Hanna was found guilty of burglary and given a sentence of one year to one year and a day imprisonment. The Illinois Supreme Court affirmed this conviction on March 27, 1969. The petition for rehearing was denied on May 27, 1969. The defendant now petitions this Court for a Writ of Certiorari. Pending final disposition of this case, his sentence has been stayed.

REASONS FOR DENYING THE WRIT

I.

THE POLICE HAD PROBABLE CAUSE TO ARREST THE DEFENDANT.

The defendant would have this Court believe that the sole basis for his arrest was the report of his suspicious conduct by an informant to the Evergreen Park police. This contention completely ignores the actual facts of the case which reflect probable cause for Hanna's arrest.

An arrest is constitutionally valid if, at the moment it is made, the officers had "probable cause" to make the arrest—that is:

> "Whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense." *Brinegar* v. *United States*, 338 U.S. 160, 175-6, (1949).

The state submits that on the facts of this case, Lt. Dennis and his partner were justified in believing that the defendant had committed a burglary.

The suspicious conversation of the defendant had been reported by an informant to the Evergreen Park police one week before the arrest. This informant was a resident of Evergreen Park who lived in the vicinity of a recently burglarized home. He noticed Hanna and his companion in the area and reported defendant's behavior and a description of the car to the police.

Sergeant Ward of the Evergreen Park police put the car under surveillance and checked into its ownership. This check revealed that the car belonged to the sister of three

known criminals—a factor certainly relevant in a consideration of the circumstances known to the police at the time of the arrest. Contrary to the defendant's emotion-laden characterization of this factor as an attempt to introduce a concept of "attainder of blood" in the annals of American jurisprudence (Def. Br. 5), the criminal associates of the defendant are relevant to the determination of whether or not he may have committed an offense. While this factor is not determinative, it is entitled to some weight. Indeed, in *Sibron* v. *New York,* 392 U.S. 40 (1968), the arrest of the defendant for unlawful possession of heroin was based upon his association with a number of known narcotics addicts. This court found this factor *alone* insufficient to constitute probable cause for the arrest. In the instant case the arrest is supported by several additional factors which, when considered together, constitute probable cause for the arrest.

On the night of the arrest, the car bore different license plates than had been observed by Sergeant Ward earlier that week. In addition, the car was operating without a license plate light. The defendant's argument that this second license plate was merely the result of a tardy renewal of the license with the Secretary of State is completely unsupported by the evidence. At trial, the defendant made no effort to establish this theory. Indeed no evidence was introduced by the defendant to prove that the original license plate was not a 1966 issue.

The more logical explanation for the changed license plates is an effort by Hanna to avoid identification of the auto by police during his nocturnal travails. This theory is supported by the absence of a license plate light on the car.

The defendant likewise ignores much of the other relevant information which the police had in their possession

and which affected their decision to stop the defendant's car. Hanna was a known burglar. He had been seen driving the car in the vicinity of two burglaries (in Evergreen Park and Skokie) and was reported by a police officer as having been observed leaving the site of a burglary in Skokie just before he was arrested.

From the circumstances of this case, the facts known to the police support a "reasonable belief" that a crime had been committed and that the defendant had perpetrated the offense. There was probable cause to arrest Hanna without a warrant.

The defendant's citation of *Beck* v. *Ohio,* 379 U.S. 89 (1964) and *Sibron* v. *New York, supra,* is futile since these two cases are easily distinguishable on their facts. In *Beck,* there was a very meager record consisting mainly of the testimony of the arresting officer taken on a motion to suppress. His testimony was vague, indicating only his knowledge of the defendant's prior record, supported by a police identification photograph, and undefined "reports" with no acknowledgements of their content or source.

In the instant case, the informant and the content of his report were identified. The police knew of Hanna's prior burglary history. In addition, the police had the several other factors previously discussed to further substantiate their decision.

As indicated earlier, *Sibron* is also inapplicable. In that case, the police had no basis for stopping the defendant other than his association with known narcotics addicts. Herein, the defendant's possible criminal association is only one of many factors available to the police in determining that there was probable cause for the arrest without a warrant.

II.

THE SEARCH OF DEFENDANT'S CAR WAS REASONABLE UNDER THE FOURTH AMENDMENT.

The question of whether a search and seizure is reasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of the particular case. *Cooper* v. *California*, 386 U.S. 58, 59 (1967). Here the defendant asserts that this court must determine that the ruling in *Preston* v. *United States*, 376 U.S. 364 (1964) is of continuing validity despite the opinion in *Cooper* v. *California, supra*. The State submits that it is unnecessary to reach this question in deciding whether the facts of the instant case support the warrantless search of the defendant's automobile. Following the rationale of *Dyke* v. *Taylor Implement Manufacturing Company, Inc.*, 391 U.S. 216 (1968) (upon which defendant primarily relies), the search was permissible under the Fourth Amendment.

The defendant's car was stopped by the Niles police in connection with a burglary charge. The arresting officers, from the facts within their knowledge at the time, had probable cause to believe the defendant and his companion had committed a burglary. When Lt. Dennis scanned the car and its occupants with his flashlight, he observed in plain view several articles and tools normally used in the commission of such a crime.

As this court recognized in *Dyke*, a warrantless search of an automobile must be grounded on the reasonable or probable cause of the officers conducting the search in believing that "they will find the instrumentality of a crime or evidence pertaining to a crime before they begin their warrantless search." 391 U.S. at 221. Upon the facts of this case, Lt. Dennis and his partner had such probable cause before they began the search.

They had stopped the defendant's car to investigate a burglary charge. Instruments used in the commission of such an offense were in plain view of the officers, who had a right to be in a position to view them. *Harris* v. *United States*, 390 U.S. 234, 236 (1968). In these circumstances, the officers were justified in their belief that a search of the car would reveal evidence of the crime. A search warrant was not required.

Even assuming the continuing vitality of *Preston*, the facts of this case fall within the scope of the *Cooper* factors distinguishing *Preston*. The court's opinion in *Cooper* turned upon the close relationship between the search of the car and the reason for the defendant's arrest. In *Preston*, disregarding the question of the legality of the police custody of the car, the search had no relationship to the vagrancy charge on which the defendant was arrested. In *Cooper* and in the instant case, the search of the auto was directly related to the reason for the defendant's arrest.

Defendant's allegation that there was "no crime known or even suspected until after the search of the automobile" (Def. Br. 9) is fallacious in view of the substantial facts in the record supporting the probable cause for Hanna's arrest.

CONCLUSION

For the foregoing reasons, the Respondent requests that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

WILLIAM J. SCOTT,
Attorney General of the
State of Illinois,

JOEL M. FLAUM,
Assistant Attorney General,
188 West Randolph Street, Suite 2200
Chicago, Illinois 60601 (793-2572),

Attorneys for Respondent.

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*Jayne A. Carr, a senior student at Northwestern University School of Law, Chicago, Illinois, assisted in the research and preparation of the instant Brief.